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**FILED**

MAY 22 2017

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *M. L. [Signature]* DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
ROBERT ERIC HOLCOMB,  
  
Defendant.

CASE NO. 16cr1408 WQH  
ORDER

HAYES, Judge:

The matters before the Court are the revocation of release and the oral motion for detention made by Plaintiff United States of America at the detention hearing held on May 19, 2017.

**BACKGROUND**

On June 16, 2016, the federal grand jury returned a nineteen count indictment charging Defendant Robert Eric Holcomb ("Defendant") with four counts of Tax Evasion in violation of 26 U.S.C. § 7201; five counts of Aiding or Assisting in the Preparation of False Returns in violation of 26 U.S.C. § 7206(2); four counts of Making a False Statement to a Financial Institution in violation of 18 U.S.C. § 1014; one count of Possession of an Unregistered Firearm in violation of 26 U.S.C. § 5861(d); and five counts of Wire Fraud in violation of 18 U.S.C. § 1343. (ECF No. 1). The indictment charges that Defendant, beginning in approximately 1999 and continuing through at least February 2015, engaged in conduct to defraud the United States in its revenue collecting capacity. The indictment charges that Defendant

1 knowingly and intentionally possessed a modified AK-47 type rifle that was not  
2 registered to him in the National Firearms Registration and Transfer Record.

3 On July 19, 2016, the magistrate judge issued an Amended Order and Conditions  
4 of Pretrial Release. (ECF No. 11). The magistrate judge “determined an unconditional  
5 release pursuant to 18 U.S.C. § 3142(b) is not sufficient to assure the appearance of the  
6 defendant and the safety of the community[,]” and imposed, among other restrictions,  
7 that Defendant “make all court appearances[.]” *Id.* at 1. The magistrate judge ordered  
8 that Defendant provide the Court with a cash bond in the amount of \$100,000. *Id.* On  
9 January 6, 2017, the Court issued an order denying Defendant’s motion to dismiss the  
10 indictment, denying Defendant’s motion to dissolve the protective order, denying  
11 Defendant’s motion for reconsideration of the electronic case filing order, denying  
12 Defendant’s motion for an injunction to suppress evidence, denying Defendant’s  
13 motion for injunction to quash all IRS actions, and denying Defendant’s supplemental  
14 motion to dismiss. (ECF No. 53).

15 On January 18, 2017, Defendant filed a Notice of Interlocutory Appeal with the  
16 United States Court of Appeals for the Ninth Circuit, to appeal this Court’s January 6,  
17 2017 order. (ECF No. 56). On March 28, 2017, the Court issued an order stating that  
18 the Defendant’s Notice of Appeal did not transfer jurisdiction to the Court of Appeals  
19 and that jurisdiction remains in this Court. (ECF No. 67). The Court ordered that  
20 “[t]he parties shall continue to prepare for trial.” *Id.* at 3.

21 On May 8, 2017, the Court issued a minute order granting Plaintiff’s motion for  
22 a status hearing. (ECF No. 70). In the minute order, the Court set a status hearing for  
23 May 12, 2017 at 2:00 PM in Courtroom 14B before Judge William Q. Hayes. *Id.* On  
24 May 10, 2017, Defendant filed a pleading titled “Judicial notice of violation of the  
25 Constitution’s ‘good Behaviour’ clause.” (ECF No. 71). In this pleading, Defendant  
26 refers to this Court’s May 8, 2017 minute order, and states that he is “appearing only  
27 in writing in special appearance in regards to WILLIAM QUINN HAYES’ bad faith  
28 offer to attend a nonjurisdictional status hearing[.]” *Id.* at 1 (citing ECF No. 70)

1 (quotation marks omitted).

2 On May 12, 2017, the Court held a status hearing. (ECF No. 72). Defendant did  
3 not appear at the status hearing. On May 12, 2017, the Court issued a no bail arrest  
4 warrant for Defendant. (ECF No. 73). On May 15, 2017, Defendant filed a pleading  
5 titled "Judicial notice of an act of tyranny by WILLIAM QUINN HAYES in violation  
6 of the Constitution's "good Behaviour" clause." (ECF No. 74). In this pleading,  
7 Defendant states that "when I did not physically appear WILLIAM QUINN HAYES  
8 retaliated by passing two 'Bills of Attainder' from the bench in the form of a 'NO  
9 BAIL BENCH WARRANT' (dcDE72) and an 'ARREST WARRANT ISSUED'  
10 (dcDE73) against a bloodline descendant ('Posterity') member of the 'People.'" *Id.*  
11 at 1. On May 18, 2017, Defendant was arrested. On May 19, 2017, the Court held a  
12 status hearing. (ECF No. 77).

### 13 **RULING OF THE COURT**

14 Pursuant to 18 U.S.C. § 3148, a person who has been released under  
15 18 U.S.C. § 3142 is subject to sanctions, including detention, for violating a condition  
16 of his release. 18 U.S.C. § 3148(b) states,

17 The attorney for the Government may initiate a proceeding for revocation  
18 of an order of release by filing a motion with the district court. A judicial  
19 officer may issue a warrant for the arrest of a person charged with  
20 violating a condition of release, and the person shall be brought before a  
21 judicial officer in the district in which such person's arrest was ordered  
22 for a proceeding in accordance with this section. To the extent  
23 practicable, a person charged with violating the condition of release that  
24 such person not commit a Federal, State, or local crime during the period  
25 of release, shall be brought before the judicial officer who ordered the  
26 release and whose order is alleged to have been violated. The judicial  
27 officer shall enter an order of revocation and detention if, after a hearing,  
28 the judicial officer--

(1) finds that there is--

(A) probable cause to believe that the person  
has committed a Federal, State, or local crime  
while on release; or

(B) clear and convincing evidence that the  
person has violated any other condition of  
release; and

(2) finds that--

(A) based on the factors set forth in section  
3142(g) of this title, there is no condition or  
combination of conditions of release that will  
assure that the person will not flee or pose a

1 danger to the safety of any other person or the  
2 community; or  
3 (B) the person is unlikely to abide by any  
condition or combination of conditions of  
release.

4 18 U.S.C. § 3148(b). In this case, the Amended Order and Conditions of Pretrial  
5 Release issued by the magistrate judge on July 19, 2016 ordered that Defendant “make  
6 all court appearances[.]” (ECF No. 11 at 1). The Court concludes there is clear and  
7 convincing evidence that Defendant has violated the condition of his release that he  
8 “make all court appearances” because Defendant did not appear at the May 12, 2017  
9 status hearing. 18 U.S.C. § 3148(b)(1)(B). The Court further finds that, pursuant to  
10 18 U.S.C. § 3148(b)(2)(B), Defendant “is unlikely to abide by any condition or  
11 combination of conditions of release.” 18 U.S.C. § 3148(b)(2)(B). The Court hereby  
12 revokes the Amended Order and Conditions of Pretrial Release. (ECF No. 11).

13 In accordance with 18 U.S.C. § 3142(f), the Court held a detention hearing on  
14 May 19, 2017 at 9:00 AM to determine whether Defendant should be held in custody  
15 pending trial. (ECF No. 77). 18 U.S.C. § 3142(e)(1) states,

16 If, after a hearing pursuant to the provisions of subsection (f) of this  
17 section, the judicial officer finds that no condition or combination of  
18 conditions will reasonably assure the appearance of the person as required  
and the safety of any other person and the community, such judicial  
officer shall order the detention of the person before trial.

19 18 U.S.C. § 3142(e)(1). “A finding that a defendant is a danger to any other person or  
20 the community must be supported by “clear and convincing evidence.” *United States v.*  
21 *Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (quoting 18 U.S.C. § 3142(f)(2)(B)).

22 18 U.S.C. § 3142(g) states that the Court “shall, in determining whether there are  
23 conditions of release that will reasonably assure the appearance of the person as  
24 required and the safety of any other person and the community, take into account the  
25 available information concerning” (1) the nature and circumstances of the offense  
26 charged; (2) the weight of the evidence against the person; (3) the history and  
27 characteristics of the person, including the person’s character, physical and mental  
28 condition, family ties, employment, community ties, and record concerning appearance

1 at court proceedings; and (4) the nature and seriousness of the danger to any person or  
2 the community that would be posed by the person's release. 18 U.S.C. § 3142(g)(1-4).  
3 Out of these four factors, "the weight of the evidence is the least important" and the  
4 statute "neither requires nor permits a pretrial determination that the person is guilty;  
5 the evidence of guilt is relevant only in terms of the likelihood that the person will fail  
6 to appear or will pose a danger to the community." *United States v. Winsor*, 785 F.2d  
7 755, 757 (9th Cir. 1986) (per curiam).

8       Regarding the first factor, the nature and circumstances of the offense charged,  
9 the grand jury found probable cause to believe that Defendant had engaged in four  
10 counts of Tax Evasion in violation of 26 U.S.C. § 7201, with a maximum penalty of  
11 five years imprisonment, a maximum term of supervised release of three years, and a  
12 maximum fine of \$250,000, or twice the gross gain or loss resulting from the offense,  
13 whichever is greater; five counts of Aiding or Assisting in the Preparation of False  
14 Returns in violation of 26 U.S.C. § 7206(2), with a maximum penalty of three years  
15 imprisonment, a maximum term of supervised release of one year, and a maximum fine  
16 of \$250,000, or twice the gross gain or gross loss resulting from the offense, whichever  
17 is greater; four counts of Making a False Statement to a Financial Institution in  
18 violation of 18 U.S.C. § 1014, with a maximum penalty of thirty years imprisonment,  
19 a maximum term of supervised release of five years, and a maximum fine of  
20 \$1,000,000 per count, or twice the gross gain or gross loss resulting from the offense,  
21 whichever is greater; one count of Possession of an Unregistered Firearm in violation  
22 of 26 U.S.C. § 5861(d), with a maximum penalty of ten years imprisonment, a  
23 maximum term of supervised release of three years, and a maximum fine of \$10,000;  
24 and five counts of Wire Fraud in violation of 18 U.S.C. § 1343, with a maximum  
25 penalty of twenty years imprisonment, a maximum term of supervised release of three  
26 years, and a maximum fine of \$250,000, or twice the gross gain or gross loss resulting  
27 from the offense, whichever is greater. *See* ECF No. 16 at 6-7. The Court concludes  
28 that the nature and circumstances of the charges, including the maximum imprisonment

1 and fines associated with each charge, are serious.

2       Regarding the second factor, the weight of the evidence against Defendant, the  
3 Court again notes that this factor is the least important factor set forth in  
4 18 U.S.C. § 3142(g). The Court considers the exhibits attached to the Plaintiff's  
5 motion to continue the trial date and to declare the case complex and exclude time  
6 under the Speedy Trial Act as some evidence against Defendant proffered at this stage  
7 in the proceedings. *See* ECF No. 36.

8       Regarding the third factor, the history and characteristics of Defendant, the Court  
9 finds that the history and characteristics of Defendant support a finding that there is "no  
10 condition or combination of conditions will reasonably assure the appearance of  
11 [Defendant] as required and the safety of any other person and the community[.]"  
12 18 U.S.C. § 3142(e)(1). Based upon Defendant's pleadings prior to the status hearing  
13 on May 12, 2017, the Court concludes there is clear and convincing evidence that  
14 Defendant was aware of the May 12, 2017 status hearing that he failed to appear at,  
15 before the hearing took place. *See* ECF No. 71 at 1. The Court further concludes that  
16 there is clear and convincing evidence that Defendant was aware of the arrest warrant  
17 issued by the Court on May 12, 2017, and that Defendant was arrested at his residence  
18 on May 18, 2017. *See* ECF No. 74 at 1. Therefore, Defendant's "record concerning  
19 appearance at court proceedings" supports a finding that "no condition or combination  
20 of conditions will reasonably assure the appearance of [Defendant] as required and the  
21 safety of any other person and the community[.]" 18 U.S.C. §§ 3142(e)(1); (g)(3)(A).  
22 While Defendant has family ties and a long period of residence in the community, the  
23 Court concludes that the third factor supports a finding of detention in this case.

24       Regarding the fourth factor, the nature and seriousness of the danger to any  
25 person or the community that would be posed by the person's release, the Court  
26 considers the Possession of an Unregistered Firearm charge against Defendant, and the  
27 Plaintiff's contention that on February 6, 2015, when the IRS and FBI executed a  
28 search warrant at Defendant's home, "[Defendant] was standing in the kitchen, with a

1 loaded Beretta pistol concealed in the pocket of his shorts.” (ECF No. 36 at 3-4). The  
2 Court concludes this evidence supports a finding that the release of Defendant before  
3 trial presents a danger to the community under 18 U.S.C. 3142(g)(4).

4 The Court concludes that “no condition or combination of conditions will  
5 reasonably assure the appearance of [Defendant] as required and the safety of any other  
6 person and the community[.]” 18 U.S.C. § 3142(e)(1). Pursuant to  
7 18 U.S.C. § 3142(e)(1) and 18 U.S.C. §§ 3148(b)(1)(B) & (b)(2)(B), the Court orders  
8 that Defendant be detained pending trial and, if convicted, sentencing in this matter.

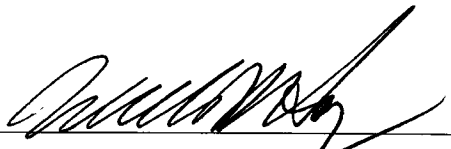
9  
10 **CONCLUSION**

11 IT IS HEREBY ORDERED that the Amended Order and Conditions of Pretrial  
12 Release issued on July 19, 2016 (ECF No. 11) is revoked.

13 IT IS FURTHER ORDERED that Defendant be detained pending trial and, if  
14 convicted, sentencing in this matter.

15 IT IS FURTHER ORDERED that Defendant is remanded to the custody of the  
16 United States Marshal or his/her designated representative for confinement in a  
17 corrections facility separate, to the extent practicable, from persons awaiting or serving  
18 sentences or being held in custody pending appeal. Defendant must be afforded a  
19 reasonable opportunity for private consultation with defense counsel. On order of a  
20 court of the United States or on request of an attorney for the government, the person  
21 in charge of the corrections facility must deliver Defendant to the United States  
22 Marshal for the purpose of an appearance in connection with a court proceeding. This  
23 Order is entered without prejudice.

24  
25 DATED: 5/22/17

  
26 **WILLIAM Q. HAYES**  
27 United States District Judge  
28